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SUBJECT: ECUADOR - CIVAIR PROGRESS?

SENSITIVE

¶1. (U) Summary. After lengthy delays, the GOE finally is making some progress on bilateral Civair issues. Within the span of one week, Ecuador's civil aviation legislation moved closer to congressional vote and the Aviation Council approved the GOE's renewal of its Bilateral Civil Aviation Agreement with the US. Renewal of the Bilateral Agreement, previously a simple annual process, had languished for five months with the Council. Meanwhile, civil aviation legislation has spent almost two years in congress while being held up by numerous special interests intent on keeping it from passing. If it makes it through a second reading of Ecuador's congress with key provisions intact, the civil aviation legislation will be a crucial first step toward allowing Ecuador to regain category one status. While the legislation addresses category one safety concerns, it also creates new opportunities for politically-connected economic interests in Ecuador. End Summary.

COUNCIL APPROVES RENEWAL OF BILATERAL AGREEMENT

¶2. (U) On December 8, Ecuador's Aviation Council voted to renew the Ecuador-US Bilateral Civil Aviation Agreement. Members of the Council informed Econoff that it is sending a note to the MFA indicating its approval of the renewal. Upon receipt of the note, the MFA formally will notify the Embassy, ending a five-month delay in the renewal process.

CIVAIR LEGISLATION PROCEEDS TO FINAL DEBATE

¶3. (U) After almost two years, revisions to Ecuador's Civil Aviation legislation were unanimously approved in committee on December 1 and are scheduled to head for a second debate in January 2006. If Ecuador wants to regain category one certification of its safety oversight system, safety provisions acceptable to the Federal Aviation Authority (FAA) need to survive this second debate. The unanimous nature of the committee's decision suggests that political and economic differences that could water down safety components of the legislation might be avoided in the second debate. Ecuador lost category one status in 1994 and with it the right for Ecuadorian airlines to fly directly to the U.S. and to maintain code-sharing relationships with American carriers.

¶4. (U) Congress's first debate on the Civair legislation took place in April 2004. It scrapped key safety provisions from a text developed in conjunction with the FAA and was motivated by vested interests within the GOE.

¶5. (U) The text of the current legislation, which underwent an FAA legal review November 29 - December 1, contains the previously-removed safety provisions critical for category one compliance. Rather than creating a new law, it amends the two legal instruments governing civil aviation in Ecuador: the Aeronautic Code and the Law of Civil Aviation. Most importantly, the provisions separate the functions of Ecuador's Civil Aviation Administration (DAC) and the Aviation Council. Currently, the highly politicized Aviation Council maintains control over budgets, hiring, and safety oversight. Under the new legislation reviewed by FAA, the DAC becomes an autonomous Civair entity that can create its own regulations, maintain its own budget, hire its own technical personnel, and delegate authority to staff.

MUCH MORE NECESSARY FOR CATEGORY ONE

¶6. (U) A number of Civair authorities maintain the impression that Civair legislation is the final hurdle to obtaining category one status. In order to quell this myth, both Econoff and the FAA legal reviewer, in meetings with representatives from the DAC and the Aviation Council, emphasized that passage of the Civair legislation will not trigger re-instatement of category one. Still remaining are a review of the legislation ultimately passed by congress, an FAA technical visit, a review of safety improvements at Ecuador's Quito and Guayaquil airports, and a final audit. Although assessments by the FAA in 2004 indicate that there are no glaring concerns with respect to these safety reviews and audits, regaining category one is far from a done deal.

ENTRENCHED INTERESTS STILL A POTENTIAL BARRIER

¶7. (SBU) Perhaps the greatest obstacles to passage of robust Civair legislation are the economic interests that derailed the legislation during its first reading in 2004. The most influential of these interests are aligned with the Social Christian Party (PSC). These interests control flight frequencies to the US previously used by Ecuadorian airlines. Without category one status, Ecuadorian airlines are unable to fly to the US, allowing these actors to "rent" the frequencies to companies such as LAN Chile for tens of millions of dollars annually. Passage of the legislation -- and a return to category one -- destroys this cash flow.

¶8. (SBU) Politically-appointed members of the Aviation Council also oppose FAA-approved Civair legislation. Under the current legislation, the Council determines Civair regulations, allowing its members to sell their votes and signatures on Civair matters. The new legislation, by creating an autonomous DAC, would limit the Council's control over regulations and the economic interests its members represent.

¶9. (SBU) In contrast to the political and economic intrigue disrupting the passage of Civair legislation, economic interests do not appear to be behind the delay in renewing the Bilateral Civil Aviation Agreement. In discussions with Econoff, Andres Cordova, President of the Aviation Council, and William Birkett, Director General of Civil Aviation, indicated that the delay in approving the renewal of the Bilateral Agreement was nothing more than laziness on the part of civil aviation authorities. No evidence exists to suggest otherwise.

NEW OPPORTUNITIES FOR ENTRENCHED INTERESTS

¶10. (SBU) Other provisions, while not related to safety matters, create opportunities for others to benefit economically. One such provision grants the DAC the authority to determine the commission percentage that international airlines would pay travel agencies. American carriers have approached FCS for assistance in this matter, concerned that the DAC's involvement would distort the market. While such commissions average 1% in Latin America, it is believed that some politically-connected travel agencies will be looking for up to 10% in commissions. If the law passes, American carriers would consider stopping flights to Ecuador in protest.

¶11. (SBU) Meanwhile, a more autonomous DAC, while reducing the influence of the Aviation Council, also would politicize the DAC. Economic interests that gained influence through the Council are likely to target the DAC instead. History suggests that a more autonomous DAC will find it difficult to elude this pressure, especially if its objective is not safety-related aspects of civil aviation.

COMMENT

¶12. (U) Delays associated with the civil aviation legislation and the renewal of the bilateral agreement are nothing new in Ecuador. Both entrenched economic interests and institutional laziness can easily preclude action on matters that benefit Ecuador as a whole. Even if influential actors bent on stopping the passage of FAA-acceptable Civair legislation are overcome, new avenues for political influence would surface with the new legislation.

JEWELL